



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1995

Ms. Y. Quiyamah Taylor
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-1294

Dear Ms. Taylor:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36572.

The City of Houston (the "city") received a request for the investigation records of a murder. You supplied the records of that murder investigation to this office for review. You assert that the requested records are excepted from disclosure pursuant to sections 552.103 and 552.108.¹

When applying section 552.108, this office distinguishes between cases that are still under active investigation or prosecution and those that are closed. If a case is still under active investigation, this section generally excepts from disclosure all information except that usually found on the first page of an offense report, as certain basic information about a suspect and the offense with which he is charged is public information. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision Nos. 597 (1991), 366 (1983), 127 (1976). A case may be closed due to a conviction or acquittal, or by administrative decision. Open Records Decision No. 372 (1983) at 4. You informed this office that an individual was convicted of the murder.

¹You indicate you have already released to the requestor the "public release" portion of the report.

Information in a closed file may be excepted under section 552.108 only if its release would interfere with law enforcement. Open Records Decision No. 287 (1981) at 1. Such interference must be apparent on the face of the information or reasonably explained by the governmental body claiming the exception. *Id.* It is not apparent to this office, nor have you adequately explained, how release of the records at issue will interfere with the city's law enforcement interests. Consequently, the information at issue may not be withheld from disclosure pursuant to section 552.108.

To secure the protection of section 552.103 a governmental body must demonstrate that requested information "relates" to pending or reasonably anticipated litigation. Open Records Decision No. 551 (1990) at 4. Generally, the applicability of section 552.103 ends when the litigation has concluded. Attorney General Opinion MW-575 (1982) at 2. You contend, however, that the requested information is excepted from disclosure pursuant to section 552.103(b), which provides that

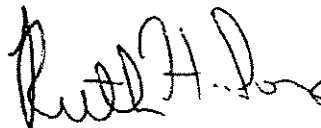
the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

This office has been informed that the murder conviction is currently on appeal before the 14th Court of Appeals. The Harris County District Attorney submitted a letter to this office asking that the information at issue not be disclosed. Since there is a pending appeal and our review of the requested information shows that it is related to the murder conviction, section 552.103 is applicable.

However, the records at issue may be withheld from disclosure only to the extent that the opposing party to the litigation has not already had access. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding the other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Ruth H. Soucy", with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 36572

Enclosures: Submitted documents

cc: Mr. Jeffrey L. Diamond
Galloway, Johnson, Tompkins & Burr
2603 Augusta, Suite 1150
Houston, Texas 77057
(w/o enclosures)